

STATE OF MICHIGAN
COURT OF APPEALS

HEATHER K. KELLY, also known as HEATHER
K. BANKER,

Plaintiff,

v

SCOTT D. HATT,

Defendant-Appellant,

and

COLLIN KELLY,

Intervening Defendant-Appellee.

UNPUBLISHED

August 14, 2003

No. 244305

Ionia Circuit Court

LC No. 99-019596-DP

Before: Whitbeck, C.J., and Smolenski and Murray, JJ.

PER CURIAM.

Defendant, Scott D. Hatt, appeals as of right the trial court's September 23, 2002, order¹ denying him parenting time with Ford Kelly. In that order, the trial court held that plaintiff, Heather Kelly, did not have standing to pursue this paternity action against Hatt, that intervening defendant, Collin Kelly, was Ford's equitable parent, and that Kelly would have sole legal and physical custody of Ford. On appeal, Hatt challenges the trial court's determination that Kelly is the equitable parent of Ford, which in turn resulted in Hatt not having any parental rights to Ford. We affirm.

I. Material Facts and Proceedings²

¹ The order was signed on September 23, 2002, but appears to have been entered by the court clerk on October 2, 2002.

² We take these facts from the trial court's thorough opinion of July 31, 2002. That opinion was entered after a bench trial, and neither party contests the factual findings of the trial court.

Plaintiff and Kelly were married on October 25, 1986. Ford was conceived and delivered during their marriage. However, during this time, plaintiff was engaging in an extramarital affair with Hatt. Kelly, unaware of the affair, fully participated as Ford's father during plaintiff's pregnancy, Ford's birth, and the first year that followed. Following Kelly's discovery that plaintiff was having an extramarital affair with Hatt, Kelly filed for divorce but continued to provide paternal care to Ford. Plaintiff brought this paternity action separately from the divorce, after admitting in her answer to the complaint for divorce that Ford was the product of her marriage to Kelly.

Numerous motions and orders were entered during the course of this case. However, the trial court's July 31, 2002, opinion addressed with finality all of the issues raised by the parties. That opinion was thorough, well-reasoned, and applied the controlling legal precedent to the facts as the trial court found them. As noted, neither party challenges the factual determinations made by the trial court. Instead, Hatt challenges in a very perfunctory manner the trial court's conclusion that Kelly is Ford's equitable parent, despite the fact that Hatt is Ford's biological parent.

II. Analysis

In his brief on appeal, Hatt lists his first issue presented as whether "the trial court should have set aside its prior ruling that Scott Hatt was the biological father of Ford Hatt/Kelly?"³ Despite setting forth this issue, Hatt's brief contains no reference to, or argument about, the "prior order," its terms, the trial court's rationale for entering it, or why the trial court erred in setting it aside through the order now on appeal. "It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) (citation omitted). Hatt's failure to make any argument in support of this issue results in it being deemed abandoned on appeal. *City Council of Flint v State of Michigan*, 253 Mich App 378, 393 n 2; 655 NW2d 604 (2002).⁴

³ According to the trial court's order, Ford's last name was to be as it is on his birth certificate, Ford Patrick Kelly. We are therefore unsure why, in the absence of a stay of that order, Hatt has inserted his last name with that of Kelly.

⁴ In any event the trial court did not err in setting aside the prior filiation order. A party lacks standing to bring an action under the Paternity Act, MCL 722.711 *et seq.*, unless the child was born out of wedlock or the trial court made a prior determination that the child was not the product of the marriage. MCL 722.711, 722.714; *Girard v Wagenmaker*, 437 Mich 231, 242-243; 470 NW2d 372 (1991); *Dep't of Social Services v Baayoun*, 204 Mich App 170, 175; 514 NW2d 522 (1994). Here, Hatt encouraged the trial court to review the issue of standing, and the trial court properly determined that it had not made the necessary statutory determination before plaintiff brought her paternity action. Therefore, plaintiff lacked standing to bring the paternity action. *Baayoun, supra* at 174-176. When a court holds that a plaintiff lacked standing to pursue an action, all orders that preceded the standing determination are void. *O'Connor v Oakland Co Sheriff's Dep't*, 169 Mich App 790, 795; 426 NW2d 816 (1988); *Hendricks v Sterling Heights Police & Fire Dep't Civil Service Comm*, 85 Mich App 646, 649; 272 NW2d 170 (1978).
(continued...)

Defendant also fails to develop any argument regarding why Kelly should not hold the status of equitable parent. Therefore, he has likewise abandoned this issue on appeal. *City Council, supra*. Although we need not address this issue, we conclude that the circuit court did not commit a clear legal error in determining that Kelly qualifies as an equitable parent because of his continuing fatherly relationship with Ford. *Atkinson v Atkinson*, 160 Mich App 601, 606; 408 NW2d 516 (1987). The trial court's opinion properly addressed the *Atkinson* factors, and its findings on this issue were clear, cogent, and supported by evidence in the record. Indeed, the facts as found by the trial court make this a compelling case for application of the equitable parent doctrine, as the evidence showed that Kelly has always provided love, care, and stability to Ford, and has every desire to continue doing so throughout his life. As such, Kelly enjoys all the benefits conferred on parents by the Child Custody Act. *Soumis v Soumis*, 218 Mich App 27, 34; 553 NW2d 619 (1996).⁵

Affirmed.

/s/ William C. Whitbeck
/s/ Michael R. Smolenski
/s/ Christopher M. Murray

(...continued)

Accordingly, the trial court did not err when it set aside the filiation order naming defendant as Ford's father.

⁵ At the same time, however, because of our affirmance of the trial court's ruling on standing and Kelly's status as an equitable parent, Hatt is a third-party towards Ford under the Child Custody Act.